

COPY

RULE 63 (37 CFR § 1.63)
DECLARATION
FOR PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "CANINE AND FELINE B7-2 NUCLEIC ACID MOLECULES AND USES THEREOF", the specification of which was filed on March 19, 1999, receiving Serial No. 09/646,561, and identified as Attorney File No. IM-1-C1-PUS (formerly HKZ-039CPUS).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) as set forth on the attached sheet indicated Page 3 hereof and which I have read.

I hereby claim foreign priority benefits under 35 U.S.C. 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s) Number	Country	Day/Month/Year Filed	Priority Claimed Yes No
PCT/US99/06187	PCT	19 March 1999	Yes

I hereby claim the benefit under 35 U.S.C. 120 of all United States and PCT international applications listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

Application Serial No.	Filing Date
09/062,597	17 April 1998

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

1)

Inventor's Signature



Date 10/17/03

Inventor's Name (typed): Shumin Yang, Ph.D.

Citizenship: United States of America

Residence: 765 San Antonio Road, #51
Palo Alto, California 94303

Post Office Address: Same as Residence

2)

Inventor's Signature

Date

Inventor's Name (typed): Gek-Kee Sim, Ph.D.

Citizenship: United States of America

Residence: 543 Franklin St.
Denver, Colorado 80218

Post Office Address: Same as Residence

37 CFR §§ 1.56(a) and (b)
DUTY TO DISCLOSE INFORMATION MATERIAL
TO PATENTABILITY

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of a patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.*

*Note, 37 CFR §1.97(h) states: "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b)."



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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

Elizabeth A. Hanley
LaHive & Cockfield, LLP
28 State Street
Boston, MA 02109

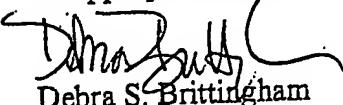
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In re Application of
Gee-Kee Sim et al.
Application No.: 09/646,561
PCT No.: PCT/US99/06187
Int. Filing Date: 19 March 1999
Priority Date: 19 March 1998
Attorney's Docket No.: HKZ-029CPUS
For: T CELL COSTIMULATORY PROTEINS,
SEQUENCES AND USES THEREOF

Dear Dr. Sim:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.


Debra S. Brittingham
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-3401
Facsimile: (703) 308-6459

RECEIVED	LAHIVE & COCKFIELD
DOCKET DEPT.	
12/3/01	DEC 3 2001
RETRIEVED: 12/3	
FORWARDED:	

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For: T CELL COSTIMULATORY PROTEINS,
SEQUENCES AND USES THEREOF

ENTERED

R.	LAHIVE & COCKFIELD, LLP
12/10/01	DEC - 5 2001
RETRIEVED 12/5/08 V.	
FORWARDED	

DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.47(a)

This is a decision in response to the declaration and renewed petition filed under 37 CFR 1.47(a) on 17 September 2001, to accept the application without the signature of co-inventor Gee-Kee Sim. The required \$130 petition fee has been received.

BACKGROUND

On 19 March 1999, applicants filed international application PCT/US99/06187, which claimed priority of an earlier US application filed 17 April 1998 and an earlier provisional application filed 19 March 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from applicant on 19 September 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 19 October 1999. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 September 2000.

On 19 September 2000, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c).

On 01 November 2000, the United States Designated/Elected Office mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/EO/EO905), indicating that an oath or declaration and the surcharge for filing the oath or declaration later than 30 months from the priority date as required by 37 CFR 1.492(e) needed to be filed. The notification set a one month time period in which to respond.

On 01 February 2001, applicant filed a response to the PCT/DO/EO/905 including a petition under 37 CFR 1.47 (a) and the required petition fee, and the required surcharge for filing the declaration later than 30 months from the earliest priority date.

A decision of the petition was mailed to applicant on 17 May 2001 indicating that before a refusal to sign a declaration can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application.

On 17 September 2001, applicant filed the current Renewed Petition under 37 CFR 1.47(a) and a \$130 fee; the declaration of Timothy McCutcheon including various exhibits; the unexecuted declaration, petition and power of attorney; a request for a two-month extension of time and the required fee; and, a petition to revive and the appropriate fee.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

With respect to item (1), the \$130 petition fee under 37 CFR 1.17(h) was included with the original petition. Therefore, no additional fee is due. The enclosed \$130 fee will be refunded to applicant's deposit account.

With respect to item (2), Mr. Timothy McCutcheon states that he left various email and voice messages on Dr. Sim's telephone. Dr. Sim did not respond to any of the messages. Further, on 26 July 2001, Mr. McCutcheon sent Dr. Sim, by Federal Express, a spiral bound copy of the application as well as the assignment and declaration. On 27 July 2001, G. Sim signed for this package as evidenced by the "Track Response."

With respect to item (3), Dr. Sim's last known address is furnished in Mr. McCutcheon's declaration.

Regarding item (4), applicants included a Declaration signed by two of the three co-inventors with the original petition. The nonsigning co-inventor's name, residence, post office address and citizenship are typed on the declaration. This declaration satisfies the requirements of section 409.03(a) of the Manual of Patent Examining Procedure (MPEP) and is in compliance with 37 CFR 1.497(a) and (b). Thus, item (4) has been satisfied.

With respect to applicant's petition to revive, no such petition is necessary. Therefore, the fee of \$620 will be refunded to applicant's deposit account.

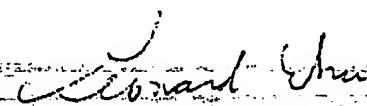
CONCLUSION

The petition under 37 CFR 1.47(a) is GRANTED.

Applicant's DEPOSIT ACCOUNT 12-0080 will be refunded \$750.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of 01 February 2001.


Debra S. Brittingham
PCT Special Programs Examiner
PCT Legal Office


Leonard Smith
PCT Legal Examiner
PCT Legal Office

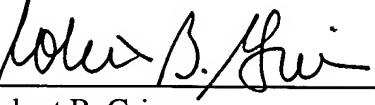
DSB/LS:dsb
Telephone: (703) 308-3401
Facsimile: (703) 308-6459

POWER OF ATTORNEY

On behalf of HESKA CORPORATION, a Delaware corporation, having a principal place of business at 1613 Prospect Parkway, Fort Collins, Colorado 80525, being the assignee of and owning all right, title and interest in the invention entitled "CANINE AND FELINE B7-2 PROTEINS, COMPOSITIONS AND USES THEREOF," for which application for Letters Patent of the United States has been made by Gek-Kee Sim, Shumin Yang, and Karen S. Sellins, said application being identified as Attorney File No. IM-1-C1-PUS-1 and executed on even date herewith, I, Robert B. Grieve, as Chairman and Chief Executive Officer of Heska Corporation, hereby appoint Carol Talkington Verser, Registration No. 37,459; Timothy L. McCutcheon, Registration No. 41,184; Theresa A. Brown, Registration No. 32,547; and Richard J. Stern, Registration No. 50,668; of Heska Corporation, 1613 Prospect Parkway, Fort Collins, Colorado 80525, telephone number (970) 493-7272, as attorneys and agents for HESKA CORPORATION with full powers of substitution, association and revocation to prosecute the application and related U.S. and foreign applications and to transact all business in the United States Patent and Trademark Office and all foreign and international patent offices connected therewith.

Dated: February 26, 2004

By: _____


Robert B. Grieve
Chairman and Chief Executive Officer

COPY

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS (37 CFR 1.9(f) and 1.27(c)) - SMALL BUSINESS CONCERN

I hereby declare that I am an official empowered to act on behalf of Heska Corporation of 1613 Prospect Parkway, Fort Collins, Colorado 80525, a small business concern.

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled "CANINE AND FELINE B7-2 NUCLEIC ACID MOLECULES AND USES THEREOF," and identified as Attorney File No. IM-1-C1-PUS, described in the specification filed on March 19, 1999, receiving Serial No. 09/646,561.

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(c) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

NAME_____

ADDRESS_____

INDIVIDUAL SMALL BUSINESS CONCERN NONPROFIT ORGANIZATION

NAME_____

ADDRESS_____

INDIVIDUAL SMALL BUSINESS CONCERN NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Dated: October 16, 2003

By: CT Verser

Carol Talkington Verser, Ph.D.
Executive Vice President
Intellectual Property and Business Development
Heska Corporation
1613 Prospect Parkway
Fort Collins, Colorado 80525